IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1575 OF 2006

The State of Maharashtra Applicant
versus
Rajesh Jaysinglal Shah Respondent

Mr.P.S.Hingorani for applicant.
Mr.Sandesh D.Patil for respondents 1 to 3.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 25th August 2006

PC :

1. This criminal application is filed by the State for cancellation of bail granted by the Additional Sessions Judge, Thane who is also Special Judge for cases under Maharashtra Control of Organised Crimes Act, 1999 ("MCOC Act" for short) on 21st January 2006 in CR no.194 of 2005 wherein along with offences alleged under IPC, the accused who are respondents before me (accused nos.2 and 4) have been charged with offences punishable u/s.3(1)(2) and 3 of MCOC Act.

2. This application was argued before me on the

earlier occasion and I had invited attention of the learned APP to the fact that this application is for cancellation of bail granted by the learned Special Judge of the Designated Court. However, in this application the grounds for cancellation are that when the accused were originally produced before the learned Designated Judge, the learned Judge refused Police Custody Remand and within a period of two days, granted judicial custody. In such circumstances, there was no opportunity to interrogate the accused properly. Consequently, the investigations have suffered.

3. Time was granted to the learned APP to take appropriate instructions when my attention was invited by the learned counsel appearing for respondent-original accused to an order passed by this Court in Criminal Revision Application No.117 of 2006, dated 30th June 2006.

4. The petitioner-State has challenged the order dated 3rd January 2006 passed by the learned Special Judge which is an order refusing police custody remand. This criminal revision application has been withdrawn with liberty to file appropriate proceedings. I was informed

that a writ petition was filed to challenge that order. In such circumstances, I had pointed out to the learned APP that the application for cancellation cannot contain identical grounds. This is not an application to set aside the order dated 3rd January 2006 but a subsequent order enlarging the accused nos.2 and 3 on bail. The application for cancellation of the bail must contain reasons and grounds to support such a prayer. The same are hopelessly lacking in the instant application. With the able assistance of learned APP I have perused the grounds and all that is urged is that the impugned order is contrary to the provisions of law and is liable to be quashed and set aside. The learned Designated Judge failed to appreciate and take into consideration the provisions of MCOC Act and to maintain confidentiality of the investigation and necessity of police custody of accused for custodial interrogation.

5. All that was pointed out to me were grounds (c), (f) and (g). When a specific question was put to the learned APP as to what is the material by which it could be substantiated that the accused nos.2 and 3 are prima facie guilty of offence of organised crime or abetting and aiding

same or harbouring or concealing the presence of persons involved therein or facilitating the commission of said crime, the learned APP fairly submits that this material was not placed before the Trial Court nor is the same is annexed to the present application.

6. In such circumstances, considering that in para 14 of the impugned order the learned Judge has enlarged applicant on bail because no crime was registered against the accused nos.2 and 3 in the past so also he referred to the offences alleged under IPC against accused in para 15 of his order dated 21st January 2006, I enquired from the learned APP whether any material is there to show that cases have been registered against the respondents to this application. I enquired whether any details can be furnished about charge sheets having been filed before a competent Court within the period specified by Section 2(1)(d). Once again learned APP was helpless and could not assist the Court.

7. In the aforesaid circumstances and although the matter is serious in the absence of details being furnished and proper grounds raised in an application for cancellation of bail, I don’t

think that this Court can exercise powers conferred by law and cancel the bail in the instant case. This application is devoid of material particulars, and, therefore, not maintainable.

8. However, dismissal of this application shall not prevent the State from applying afresh for cancellation of the bail by raising appropriate grounds and reasons and producing adequate materials. Such an application, if made, would be considered on its own merits and in accordance with law uninfluenced by dismissal of this application.

(S.C.DHARMADHIKARI, J.)